

EPHRAIM SAVITT

Attorney at Law

280 MADISON AVENUE
SUITE 2200
NEW YORK, NEW YORK 10016
WWW.SAVITTESQ.COM

(212) 679-4470
FAX: (212) 679-6770
EPHRAIM@SAVITTESQ.COM

January 13, 2012

BY ECF

Honorable Carol B. Amon
Chief United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Unites States v. Joseph Mazella,
11-CR-300 (CBA)

Dear Chief Judge Amon:

Defendant Mazella respectfully asks the Court to permit him to withdraw my previously stated position that he will waive jury selection by Your Honor and agree to selection by a magistrate judge. An order has just been posted by Magistrate Judge Mann announcing that the defense has waived its right to submit voir dire requests. A few points are in order.

One, we did not deliberately violate the magistrate's scheduling order. I have the highest regard for the magistrate judge. In fact, we complied with the Court's scheduling order that requests were to be filed by this date. Earlier this afternoon, while I was in the courthouse dealing with several cases, including this one, I received a call from my office that the magistrate judge expected the voir dire requests to be submitted by 4 this afternoon. I drafted those for submission in an effort to comply with that deadline. I also was drafting the final version of the defense reply to the government's in limine motions. I would have made both deadlines but missed that deadline because my new personal computer malfunctioned and failed to open word documents. I then typed out the proposed requests on my Blackberry (also not the most reliable tech product) and Ms. Stafford prepared a statement of the case that the magistrate required. At that point, I was trying to avoid work on the Sabbath which I am now violating because I believe this matter supersedes Sabbatical restrictions in matters of life and liberty.

Second, the voir dire proposals were filed on ECF this evening, and not simply to respond to the magistrate's order declaring our forfeiture of the right to submit such request.

Third, the requests, in my view, are essential to the informed selection of a fair and impartial jury in this case. This case is complex. It is not a standard drug or counterfeit money case where the illegality of the object of the crime is not in issue. By contrast, there is no issue

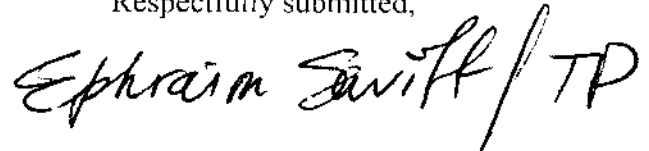
that clients/investors lost substantial amounts of money in this case. Lost investments are not necessarily the product of illegality, as is the case with crack cocaine or a phony \$50 bill. The proposed voir dire questions are designed to ferret out jurors who treat lost investments as the equivalent of the defendant's guilt and to assist the judicial officer to conduct a proper and fair jury selection.

Forfeiture orders, issued without giving the defense the benefit of the doubt that we were busting our britches to comply with a shortened deadline, among many other commitments in this case, undermine the defendant's right to a fair and informed jury selection process, as guaranteed by the Sixth Amendment. I would be remiss in performing my obligations, as a defense attorney, and especially as one appointed by the Court under CJA, if I remain silent in the face of what I firmly believe will lead to a flawed trial of a defendant who it is my duty to represent zealously and competently.

Finally, I make this application, without any purpose of disrespect to any member of the Court which I have had the honor and privilege of serving for the past 30 years. Indeed, it pains me to make this application. Had the rebuke for failure to comply with a deadline been made in the form of an order to show cause, I would at least have had the opportunity to explain why we missed the deadline by several hours and the magistrate would have had the opportunity to get the ECF filed requests before issuing a final forfeiture order.

I apologize to the Court for any inconvenience that occasioned by this application to withdraw the defendant's previously stated waiver and respectfully ask that Your Honor conduct the jury selection and consider asking the voir dire questions proposed by the defense, in substance, if not in haec verba.

Respectfully submitted,

A handwritten signature in black ink that reads "Ephraim Savitt" followed by a large, stylized "TP" to the right.

Ephraim Savitt

CC: Hon. Roanne L. Mann, USMJ
AUSA John Nowak
AUSA Winston Paes
Ying Stafford, Esq.
Joseph Mazella